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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,)
16 Plaintiff,) No. 09-02308 WHA
17 v.)
18 APPROXIMATELY \$8,800 IN)
19 AMERICAN EXPRESS TRAVELERS')
CAMCHECKS; AND ONE PENTAX 35mm)
CAMERA, SERIAL NUMBER 1318242)
Defendant.) CASE MANAGEMENT CONFERENCE
STAY

STAY

20 Plaintiff, United States of America, and claimant Gary Hardeman respectfully submit this Joint
21 Case Management Statement.

22 **1. Jurisdiction and Service**

23 This Court has jurisdiction under Title 28, United States Code, Sections 1345 and
24 1335(a); Title 18, United States Code, Section 981(a)(1)(A); Title 18, United States Code,
25 Sections 2254; Title 18, United States Code, Section 2428. There are no counterclaims. Plaintiff
26 has served notice of this action on all persons who may have an interest in the property, including
27 the following: Claimant Gary Hardeman

1 2. Facts

2 On November 30, 2008, Gary Hardeman was arrested at the San Francisco International
 3 Airport after boarding a flight to Mexico. Among his belongings, agents found and seized the
 4 defendant property. Hardeman was arrested on an outstanding warrant for failing to register as a
 5 sex offender, and charges are currently pending in San Francisco County Superior Court.
 6 Hardeman was also arrested for Engaging in Illicit Sexual Conduct in Foreign Places, and
 7 charges are currently pending in the federal District Court for the Northern District of California.

8 3. Principal Factual and Legal Issues

9 The principal factual and legal issues in dispute are: 1) whether plaintiff can establish by
 10 a preponderance of the evidence that the defendant property is property intended to be used to
 11 commit or promote the sexual exploitation of children, illegal sexual activity, or child
 12 pornography; (2) whether plaintiff can establish by a preponderance of the evidence that the
 13 defendant property is property involved money laundering relating to illegal sexual activity or the
 14 sexual exploitation of children; 3) whether claimant Gary Hardeman can establish by a
 15 preponderance of the evidence that he is an innocent owner of the defendant property.

16 4. Anticipated Motions

17 On January 5, 2011, Court stayed the instant civil forfeiture case until April 7, 2011, due
 18 to claimant's pending criminal prosecution: United States v. Hardeman, 10-cr-00859 RS. On
 19 October 20, 2011, the United States filed Notice of Appeal of the District Court's dismissal of
 20 Court Two of the Indictment (Docket No. 79), and on October 21, 2011 the Court vacated the trial
 21 and pre-trial dates. Docket No. 82. As Mr. Hardeman's criminal cases are still ongoing, the
 22 parties respectfully request an additional stay of this case, so as not to raise the risk of
 23 self-incrimination or adversely affect the ability of the government to prosecute the related
 24 criminal cases.

25 5. Relief/Damages

26 Plaintiff seeks a judgment of forfeiture of the defendant property. This is not a damages
 27 case. Claimant Gary Hardeman seeks the return of the defendant property.

28 ///

1 **6. Settlement**

2 Given the stay of this action necessitated by the pending criminal cases, it is too early to
3 anticipate settlement with any accuracy.

4 **7. Discovery**

5 This is an in rem forfeiture case and is exempt from initial disclosures pursuant to
6 Federal Rule of Civil Procedure 26(a)(1)(B)(ii). Given the stay of this action necessitated by the
7 pending criminal cases, no discovery has occurred.

8 **8. Alternative Means of Disposition**

9 The parties would be amenable to the assignment of a settlement magistrate, after the
10 resolution of the pending criminal cases.

11 **9. Related Cases**

12 This case is related to claimant's pending criminal prosecution.

13

14 Dated: 12/08/11

15 _____
16 /S/
17 DANIEL PAUL BLANK
18 Attorney for Claimant

19 Dated: 12/08/11

20 _____
21 /S/
22 DAVID B. COUNTRYMAN
23 Assistant United States Attorney

[PROPOSED] ORDER TO STAY

Based upon claimant Gary Hardeman's request to continue the stay of the current forfeiture proceedings, the United States' non-opposition, and for good cause appearing, it is HEREBY ORDERED that the instant case be, and hereby is, STAYED, pursuant to 18 U.S.C. § 981(g) until a status conference can be held on April 12, 2012, at 11:00 a.m. _____.

Please file a joint case management statement at least seven days prior.

SO ORDERED.

Dated: December 9, 2011.

A circular stamp of the Northern District of California, United States District Court. The outer ring contains the text "UNITED STATES DISTRICT COURT" at the top and "NORTHERN DISTRICT OF CALIFORNIA" at the bottom. In the center is a red rectangular box containing the handwritten signature "Wm Alsup" in blue ink, with "Judge William Alsup" printed below it. Above the signature, the text "IT IS SO ORDERED" is printed, followed by "AS MODIFIED" on the next line.